

MEMORANDUM OF DECISION: 03-20210106
Withholding Tax
For the 2018 Tax Year

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Taxpayer provided documentation sufficient to support its claim for refund.

ISSUE

I. Withholding Tax - Burden of Proof.

Authority: IC § 6-8.1-9-1; IC § 6-3-4-8; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 3.1-1-97](#).

Taxpayer argues that the Department's refund denial for 2018 withholding tax was incorrect as an overpayment exists for that tax period.

STATEMENT OF FACTS

Taxpayer withheld tax for one Indiana employee prior to the 2018 tax year. As of December 2017, Taxpayer no longer had any Indiana employees. Before Taxpayer communicated this fact to the Department, a proposed assessment was issued for 2018 withholding tax. This assessment proceeded into collections before Taxpayer filed a BC-100, as well as supporting documentation, with the Department and closed its withholding account in Indiana. During the collections process, Taxpayer made a payment on the assessment.

After reviewing Taxpayer's documentation, the Department closed Taxpayer's withholding account and withdrew the proposed assessment. However, no refund was issued for the payment made during the collections process. Taxpayer timely filed a claim for refund, stating that the payment on the now-withdrawn proposed assessment should be refunded. The Indiana Department of Revenue ("Department") denied this claim, stating that no overpayment exists to be refunded. Taxpayer disagreed with the denial and timely filed a protest to that effect. A hearing was held and this Memorandum of Decision results. Additional facts will be provided as necessary.

I. Withholding Tax - Burden of Proof.

DISCUSSION

Taxpayer protests the refund denial, claiming that its payment of 2018 withholding tax should be refunded as there was no tax due in that year.

"[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund. This statute provides, in part:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department.

An Indiana employer is required to "withhold, collect, and pay over income tax on wages paid by such employer to such employee . . . [in] the amount prescribed in withholding instructions issued by the department." IC § 6-3-4-8(a). Subsection (a)(1) specifically provides that the employer is liable for the amount that it was required to withhold. These statutory requirements are restated in [45 IAC 3.1-1-97](#), which also explains that "[i]n the case of

delinquency or nonpayment of withholding tax, the employer is liable for such tax, penalties, and interest." *Id.*

Taxpayer provided documentation showing that a payment was made to the Department for the proposed assessment in question. It also provided documentation showing that the Department acknowledged the end of its business activity in Indiana on or before December 31, 2017. After reviewing the Department's records, an overpayment of tax for the 2018 withholding tax does, in fact, exist. Therefore, Taxpayer is entitled to a refund of 2018 withholding tax.

FINDING

Taxpayer's protest is sustained.

February 10, 2023

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